

USING SCHOOL WELLNESS POLICIES TO IMPROVE VENDING CONTRACTS

All public school districts nationwide are required to implement a “wellness policy” to promote student health. This fact sheet is designed to help schools develop or amend their wellness policies to include healthy vending practices.

As of 2006, public school districts nationwide were required by federal law¹ to adopt and implement a “wellness policy” that promotes student health through nutrition education, physical activity and other school based activities. Wellness policies must also include nutrition guidelines for all foods available on each school campus within the district.

Like all policies adopted by school districts, wellness policies establish a general direction for the district; set goals, assign authority, and establish controls that make school governance and management possible. School board policies have the force of law equal to a statute or an ordinance.

Once adopted, district policies are put into operation by district administrators who develop detailed written statements known as *administrative regulations*. Such regulations serve to implement policies through specific directives and procedures. Like policies, administrative regulations also are enforceable.

Since a district’s wellness policy must include nutrition guidelines for *all* foods available at each school, wellness policies are an especially effective way for districts to change the unhealthy mix of products commonly sold and advertised on school property. And, because vending machines are a primary means by which unhealthy foods and beverages are sold to students, changing what is sold and advertised in them is a powerful way to improve school food environments.

One way that a district can improve what’s vended on its property is to create a “healthy vending program” that becomes an integrated component of the district’s wellness policy. Districts can create a healthy vending program by: (1) adopting a policy that limits or bans the sale and advertising of unhealthy foods and beverages; and (2) issuing administrative regulations that establish strict nutrition and advertising guidelines for vended products and consolidates all vending operations at the district level.

By consolidating all vending operations at the district level school administrators can accomplish a number of important objectives. For example, consolidation ensures that the district’s business practices are aligned with its nutrition goals; helps develop strategic vendor relations; increases the district’s bargaining power which can lead to contracts with more favorable terms and conditions; increases process efficiencies; ensures that compliance and financial oversight are a priority; and improves vendor communication which promotes better customer service.

What follows is an example of a healthy vending program that is designed to be a component of a comprehensive wellness policy. It promotes student health through nutrition and advertising guidelines and then supports that goal with sound business practices. Districts may choose to adapt this model to meet local needs and reflect business and community priorities.

Even though most districts have already adopted their wellness policy in compliance with the 2006 federal deadline, wellness policies can be amended at any time to reflect changing goals and objectives.

MODEL WELLNESS POLICY AND ADMINISTRATIVE REGULATIONS

ABC Unified School District Board Policy #XXXX NUTRITION POLICY

Vending Machines. The District shall implement a districtwide Vending Machine Program that places exclusive authority over all vending activities under the control of District administrators

Advertising Guidelines. The District shall not allow advertising of food and beverage items that do not meet the nutrition standards of the Wellness Policy.

ABC Unified School District Administrative Regulations NUTRITION

Vending Machines

1. The purposes of the districtwide Vending Program are to:
 - a. Ensure that the Wellness Policy is implemented uniformly throughout the District
 - b. Create economies of scale in order to increase revenues to the District
 - c. Improve process efficiencies
 - d. Improve communication and customer service
 - e. Ensure that revenues generated from vending sales are properly accounted and applied to student body programs, school sites, and reinvested in District meal program in compliance with state and federal regulations.
2. The District's exclusive authority over the vending program means that at the minimum that the District shall:
 - a. Ensure that Vending Program is implemented and conducted in accordance with all Federal, State, and local laws including California Education Code
 - b. Identify vendors through a competitive procurement process
 - c. Negotiate and enter into only those vending contract that help achieve Wellness Policy objectives and ensure that all vending contracts contain language that permits the District to enforce the Wellness Policy objectives contained in the contract to the maximum extent permitted by law
 - d. Enter into only those vending contract that maximize revenues to the District, provide for accurate and timely revenue reports, permit District auditing rights, permit contract renegotiations in the event that the Wellness Policy or California law is amended during the term of the contract, and have a duration of no more than 4 years
 - e. Consult on a regular basis with school site administrators to ensure open and continuous communication about the Vending Program
 - f. Establish the maximum number of machines to be allowed per site
 - g. Pre-identify all the vending machine locations
 - h. Select all products to be vended
 - i. Ensure that students who attend Child Development Centers or elementary schools do not have access to vending machines
 - j. Establish the hours that vending machines can be operated
 - k. Establish and maintain a system of financial accountability that safeguards public funds, applies all Vending Programs revenues towards student body programs, school sites, or District meal programs,

and, to the greatest extent possible, shares revenues across District lines in compliance with state and federal regulations.

3. This program shall adhere to nutritional standards of the Wellness Policy for all machines.
4. Nothing in the Vending Program shall be construed to require a school site principal or administrator to place vending machines on their school site and the decision whether to install vending machines shall be retained solely by each individual principal or school site administrator.

Advertising Guidelines

1. The District shall maintain exclusive authority and control over all advertising on District property regardless of the point of view expressed in the advertising or the medium used to disseminate the advertising.
2. The District shall at minimum:
 - a. Only permit third parties to advertise products that meet the standards set forth in the Wellness Policy or those that are included in the list of items that can be served or sold on campus or on school grounds
 - b. Only enter into or renew a contract in which the District grants advertising right if such contract has been developed in compliance with Education Code
3. The District shall include language that:
 - a. Prevents the vendor from challenging the District's advertising restrictions
 - b. Creates a deterrent for the vendor to fund or otherwise encourage a third party to challenge any portion of the contract, including the advertising restriction
 - c. Motivates the vendor to comply with the contract by defining the vendor's failure to comply with advertising restrictions as a material breach of the contract and thus subject to liquidated damages

This fact sheet is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues, and attorneys should perform an independent evaluation of the issues raised.

¹ Federal Child Nutrition and Women, Infants and Children (WIC) Reauthorization Act of 2004 (P.L. 108-265, 42 USC 1751).

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